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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/637,894	04/25/1996	GEORGE TASH	P-2127-40	5079

7590 10/31/2002  
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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/637,894

Applicant(s)

TASH, GEORGE

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 9-17 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 1996 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. The proposed drawing corrections/formal drawings filed on February 19, 2002, August 2, 2002 and September 16, 2002 have been disapproved as containing new matter. This application will be examined based upon the original drawings filed April 25, 1996. Applicant is reminded any proposed drawing correction should be generated from the drawings as they exist on the record rather than "formal drawings" which themselves appear to depart significantly from the informals on which they are based. And, formal drawings will be required by the examiner when the application is allowed.

2. The drawings are objected to because the leader for reference numeral "18" appears misdirected in Fig. 1, the leader for reference numeral "35" appears misdirected in Fig. 2, cross-hatching is inaccurate as to material in Fig. 3, and reference numeral "54" (pg. 9 ln. 27) is missing from Fig. 5. Correction is required. It appears the objection concerning reference numeral "54" was appropriately corrected in the "[t]wo red-lined sheets" associated with the proposed drawing correction/formal drawings filed on February 19, 2002.

Applicant is required to submit a proposed drawing correction in response to this Office action. Any proposal by applicant for amendment of the drawings to cure defects must consist of two parts:

a) A separate letter to the draftsman in accordance with MPEP 608.02(r); and

b) A print or pen-and-ink sketch showing changes in red ink in accordance with MPEP 608.02(v).

IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or pen-and-ink sketch with proposed corrections shown in red ink is required in response to this Office action, and may not be deferred.

3. The disclosure is objected to because of the following informalities: Page 5, line 19 and page 6, line 20, the descriptions of Fig. 4 are inaccurate. Also, Figs. 4a-4e lack a brief description.

Appropriate correction is required.

4. Claims 13, 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 is unclear as to whether the "standard sink or drain opening" is intended to be part of the claimed combination since such is currently inferentially recited.

Claims 16 and 17 lack antecedent basis for "said head".

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5. The claim hierarchy does not appear to be in accordance with MPEP 608.01(m). Claims remaining at allowance may require renumbering.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10, 11, 13, 14, 16, 1, 2, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Scarella.

The Scarella reference discloses a plunger comprising: a handle 3; a bellows 5; and three ring-shaped seals 7,8, as claimed. Re claim 13, one of the seals is capable of being larger than a sink or drain opening depending upon the size of such opening which is not defined by the claim. Re claim 1, the seals are annular, curved and bulbous. Re claim 2, process

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limitations in a product claim can not operate to distinguish a claimed product from a prior art product when the prior art product otherwise equates with the claimed structure. Re claim 6, the bottom seal includes a short vertical sidewall (between 8 and 9).

8. Claims 12, 15, 17, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarella and Tash.

Although the Scarella plunger is not plastic, as claimed, attention is directed to the Tash reference which discloses an analogous plunger which further is plastic (col. 2 ln. 64 and col. 3 lns. 1-2). Therefore, in consideration of Tash, it would have been obvious to one of ordinary skill in the art to associate plastic with the Scarella plunger in order to utilize a commonly available, moldable material.

Re claim 17, constructing the handle and bellows as "unitary" is also taught by Tash at column 2, lines 58-63.

9. Claims 10-17, 1-4, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarella, Locke and Tash.

Re claim 1, although the three ring seals of the Scarella plunger are not continuous, as disclosed, attention is directed to the Locke reference which discloses an analogous plunger which further includes three continuous ring seals 12.

Therefore, in consideration of Locke, it would have been obvious

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to one of ordinary skill in the art to associate continuity with the Scarella ring seals in order to facilitate drain engagement.

10. Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Applicant's arguments with respect to claims 1 and 10 have been considered but are moot in view of the new ground(s) of rejection.

12. Applicant is referred to MPEP 714.02 in responding to this Office action.

13. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Tuesday through Thursday.



Robert M. Fetsuga  
Primary Examiner  
Art Unit 3751